607 3 # 10

"PATENT"

12-28-99 QW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re)
)
Application of:)
)
Douglas P. Marquis)
)
Serial No. 08/884,146)
)
Filed: June 27, 1997)
)
For: FOOD PRE-PORTIONING BAG)
)
Examiner: S. Weinstein)
)
Group Art Unit: 1761)

APPEAL BRIEF

REAL PARTY IN INTEREST

The application is assigned to Handgards, Inc. located at 950 Skokie Boulevard, Northbrook, Illinois 60067.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

STATUS OF CLAIMS

Claim 4 has been cancelled. Claims 1-3 and 5 stand rejected and appealed. The claims are set forth in the APPENDIX hereto.

STATUS OF AMENDMENTS

There have been no amendments filed subsequent to final rejection.

SUMMARY OF THE INVENTION

This invention relates to a food preportioning bag of the type used in food handling facilities such as restaurants. In a typical situation, food such as shrimp or chicken is received in bulk form. In off-peak hours, employees divide the food into individual portions so that when the restaurant or the like is busy, there will be no time wasted preparing such portions.

It has become a common practice to store the individual portions in separate plastic bags to preserve freshness and for ease of handling. Since it was recognized that the preparation of the bulk food and the preportioning thereof might occur on a different day through the use thereof, a system needed to be developed which would insure that the oldest product in storage was used first. Since it was seldom, if ever, desirable to use such food more than one week after storage, such systems evolved into simply indicating the day on which the portioning took place or by which the food must be used. "Tuesday" food in storage would then be used before "Wednesday" food, etc.

Marking pens could be utilized to write the day on the bags but this method is unreliable due to erasure or smudging, and the method is also time consuming. Adhesive labels, each having a separate day printed thereon became a more acceptable practice. Such labels were also color coded so that workers would be able to recognize a "Wednesday" label by its red color; a "Thursday" label by its brown color, etc. This facilitated selection of the correct day label from the inventory of labels for application to the bags of preportioned food, and it also facilitated selection of the bags from storage on or before the "use by" day.

As shown in the drawings, the food preportioning bags of the invention comprise a plastic bag 10 having a main body portion 12 with closed side edges 14 and a closed bottom edge 16. A front overlay 18 may be folded along the edge 20 into overlying relationship with the front wall of the main body portion and secured at its sides 22 by heat sealing to the main body portion. The back wall of the main body portion includes an extension 24 which may be tucked within the bag after filling. The free edge 26 of the overlay 18 is then pulled over the open top of the bag to form a closure.

As noted, bags of this type, and of other designs, have been used in the past for preportioning and storing of food products. In one prior art system an inventory of adhesive labels, each having a particular day of the week printed thereon, was provided so that a label could be selected depending on the day of the week the portioning took place or the "use by" day. In another prior art system, the inventory consisted of sets of bags with each bag in a set having a particular day printed thereon.

The bags of this invention have a plurality of days printed thereon, preferably all seven days as shown at 30. A separate printed block 32 is provided for each day and spaces 34 are provided to print the day in different languages. Additional spaces 36 are available to write in other information where desired. Each day preferably is also printed in a different color with the selected colors following conventional practice as follows:

Sunday -	Black
Monday -	Blue
Tuesday -	Yellow
Wednesday -	Red
Thursday -	Brown
Friday -	Green

Saturday - Orange

Also in order to simplify recognition, the days may be printed in different languages such as English, Spanish and French.

With the bags of this invention, there is no need to maintain an inventory of different labels or of bags with different days printed thereon. Thus, the bags of the invention are all the same and are useful for all preportioning operations.

In one form of the practice of the invention, the bags are manufactured in the form shown in Figure 1. Specifically, the extension 24 of each bag is attached along a perforated line 38 to a central plastic strip 40. The strip 49 defines openings 42 which receive pegs 44 of saddle structure 46. As illustrated, a bag 10 is releasably attached to each side edge of the strip 40 so that the bags are accessible on both sides of the saddle structure.

During a preportioning operation, workers will fill a bag while on the saddle and then tear the bag off. Alternatively, workers will simply tear a bag away from the saddle structure and fill it with the desired portion. Either before or after filling, and using a marking pen, the block 32 enclosing the printed day of the preportioning operation can be provided with a check mark or marked in any other desirable fashion. Alternatively, the day by which the food should be used could be marked, if preferred. Other information can then also be marked on the bag as desired.

STATEMENT OF ISSUES

1. Whether Claims 1-3 are unpatentable under 35 U.S.C. §103(a) over Tenner et al in view of Esty, Reference N, Kramer, Yuen, Reference L, Plakas, Brumley, Fear, Jensen '273, Wolf and Clement.

2. Whether Claim 5 is unpatentable under Section 103(a) additionally in view of Jensen '780.

GROUPING OF CLAIMS

Claims 1-3 and 5 stand or fall together as one group.

THE REFERENCES

U.S. Patent No. 5,642,605

Patent No. 5,642,605 ("Tenner") discloses plastic bags each having a separate day of the week printed thereon, the printing preferably being in the same separate colors that were used on the adhesive labels discussed above. With these bags, it was only necessary to select from the inventory of bags those marked with the day that the preportioning is taking place or the "use by" day. This eliminated the time needed for applying a label to each bag.

Esty, Reference M, Kramer, Yuen, Reference L, Plakas, Brumley, Fear, Jensen and Wolf each disclose food receptacles wherein through the use of printed indicia, a person has messages that can be selected including the days of the week and dates of the month. None of these references, however, related to food preportioning.

Clement is in the medical field and discloses providing printed indicia which offers a selection for achieving radiograph identification and filing.

Jensen ('780) provides bags in a saddle arrangement facilitating removal one-at-a-time.

THE REJECTION

Claims 1-3 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Tenner et al, further in view of Esty ('524), Reference M (Europ. '963), Kramer ('858), Yuen ('670), Reference L (Fre. '649), Plakas ('860), Brumley ('603), Fear ('733), Jensen ('273), Wolf ('468) and Clement ('123).

In regard to claim 1, the Examiner asserts that as evidenced by Tenner, it was conventional in the art to provide a bag to be used to portion food for storage wherein the bag is provided with printing on at least one side wall wherein the printing indicates a day of the week. It is contended that once it is known to print indicia on a receptacle, the particular indicia one selects is seen to have been an obvious result effective variable. Further, it is asserted to be obvious that, once it is known to print a day of the week on a receptacle to indicate a storage date and once it is known to mark bags to indicate a storage date as evidenced by Tenner, to combine the two conventional concepts and provide a plurality or all seven days of the week so that one would then indicate which of the days the product was stored.

It is further contended that this is especially true in view of the fact that applicant is not the first to provide a receptacle with indicia which allows one various choices to select to impart various selective messages. The Examiner relies on Esty, Reference M, Kramer, Yuen, Reference L, Plakas, Brumley, Fear, Jensen and Wolf as examples of receptacles wherein through the use of printed indicia, a person as a varied selection of messages or communications or data that can be selected, and that these indicia include the days of the week and dates of the month. Clement is relied on a further evidence of the concept of providing printed indicia which offers one a selection, for example, by marking off one of a various number of possibilities.

In regard to claim 3, the Examiner relies on Tenner as teaching it would have been obvious to provide the indicia in at least two languages. In regard to claim 4, the style of the indicia is seen to have been an obvious matter of design.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1, and further in view of Jensen ('780) in view of the disclosure therein of a saddle arrangement for supporting plastic days.

ARGUMENT

Applicant's invention constitutes a clear and unobvious advance over prior art food preportioning bags. Applicant addressed this prior art in the specification, particularly the Tenner disclosure published as Patent No. 5,642,605. This patent is clearly the most pertinent prior art and it is of particular interest because it is the only reference dealing with the subject matter of the invention, i.e., food preportioning.

Of great significance is the fact that Tenner recites, in column 1, the background of food preportioning. It is clear from a consideration of this discussion that prior workers had not discovered the invention claimed in this application. Furthermore, a consideration of the Tenner description of that invention, and further consideration of the Tenner claims, establishes that these inventors also did not find applicant's invention to be obvious.

The examiner has located several additional references but none of these deal with food preportioning and none teach applicant's particular claimed subject matter.

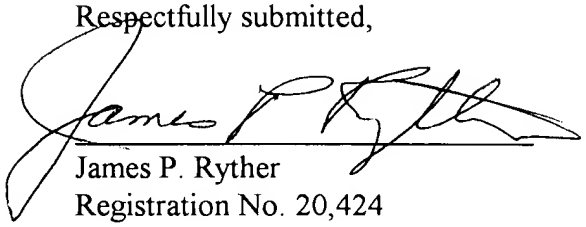
Claim 1 now recites that the printing consists of a plurality of days. In addition, each day is displayed in a block positioned closely adjacent another block displaying a different day. Furthermore, the claim recites that each day is printed in different colors. This combination is the most efficient developed for preportioning and the combination is clearly not suggested by the prior art.

It is well settled that a rejection based on Section 103 must be based on suggestions to combine teachings which are found in at least one of the references being combined with another reference. Here, the only reference dealing with food preportioning leads away applicant's invention because that invention is not among the methods used by the prior art discussed in Tenner, and that invention is not taught by Tenner.

It is also well settled that the combination of references must not be constructed from application claims. The secondary references listed on page 2 of the Examiner's action do, as the Examiner has stated, provide printing which can be marked. But a proper rejection would be to find at least a suggestion in this prior art to print in the particular manner now claimed. But that suggestion only comes from applicant's disclosure.

It is submitted that the claims are allowable as now presented and early and favorable treatment of this application is requested.

Respectfully submitted,



James P. Ryther
Registration No. 20,424

RUDNICK & WOLFE
203 North LaSalle Street
Chicago, Illinois 60601-1293
(312) 368-4000

APPENDIX

1. A preportioning bag used in food operations wherein a bulk food supply is divided into portions of smaller size, individual portions are located in a bag, and the bag is closed for use at a later date, said bag defining exposed side walls, and printing on at least one side wall, said printing comprising at least several days of the week, said printing comprising a plurality of separate printed blocks positioned closely adjacent each other, each day being printed within a separate block, and wherein each day is printed in a different color.

2. A bag according to claim 1 wherein all seven days of the week are printed on the bag.

3. A bag according to claim 1 wherein the days are printed in at least two languages.

5. A system for utilizing a food preportioning bag as defined in claim 1 including a saddle, a plurality of bags supported on the saddle, each bag being connected by means of a perforation whereby the bags can be torn away one-at-a-time from the saddle.